Filed 2/19/19 In re A.S. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re A.S. et al., Persons Coming Under the Juvenile Court Law.	B288901 (Los Angeles County Super. Ct. No. DK23622)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. TERRANCE L. et al., Defendants and Appellants.	

APPEAL from orders of the Superior Court of Los Angeles County, Nancy Ramirez, Judge. Conditionally affirmed and remanded with directions.

Janette Freeman Cochran, under appointment by the Court of Appeal, for Defendant and Appellant Terrance L.

Pamela Deavours, under appointment by the Court of Appeal, for Defendant and Appellant T.O.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and David Michael Miller, Deputy County Counsel, for Plaintiff and Respondent.

This appeal arises from the jurisdictional findings and dispositional orders declaring the three children of T.O. (Mother)—one-year-old Z.C., four-year-old Chance L., and 10-year-old A.S.—dependents of the juvenile court pursuant to Welfare and Institutions Code section 300, subdivisions (b)(1) and (j),[1] and removing the children from her custody. Mother contends the Los Angeles Department of Children and Family Services (the Department) failed to provide adequate notice under the Indian Child Welfare Act (25 U.S.C. § 1901 et seq (ICWA)) with respect to Z.C. The Department concedes, and we agree. We conditionally affirm the jurisdictional and dispositional orders as to Z.C., but remand with directions that the juvenile court direct the Department to comply with the notice provisions of ICWA.[2]

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[1] All further statutory references are to the Welfare and Institutions Code.

[2] Mother filed separate notices of appeal from the jurisdictional findings and dispositional orders for Chance and A.S. However, the brief filed by Mother's appointed counsel

Terrance L., the father of Chance (Father), appeals from the juvenile court's dispositional order removing Chance from his custody. Father contends the juvenile court failed to make an express finding of detriment before removing Chance from his care and there is not substantial evidence to support a finding of detriment under section 361.2. We affirm the dispositional order as to Chance.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Referral and Removal*

On April 11, 2017 the Department received a referral from the Long Beach Police Department stating K.C.,[3] the father of Z.C., was arrested after the officers recovered a loaded firearm in K.C.'s backpack found in the motel room in which Mother, K.C., and Mother's three children were staying. The police reported K.C. had prior domestic violence convictions.

On April 20, 2017 the juvenile court[4] signed a removal order for Z.C., Chance, and A.S. On April 24 social worker Lynnette Uribe spoke with Mother to inform her of the removal order. Mother stated she and the children stayed in the motel room one night to enable K.C. to see his daughter Z.C. She denied knowing K.C. had a loaded firearm in the room.

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raises no issues as to these children. Accordingly, Mother's appeals as to Chance and A.S. are dismissed as abandoned.

[3] K.C. is not a party to these appeals.

[4] Judge Anthony A. Trendacosa.

On April 24 Uribe talked to Father, who was living in Las Vegas, Nevada. Father stated he had a relationship with Chance, and requested Chance be released to him. Father reported Mother neglected Chance by failing about a year earlier to take him to the doctor for his eczema, leading to his hospitalization.

On April 25 Uribe made an unannounced visit to the family home. She knocked, but no one answered. She smelled marijuana coming from the home. Uribe left a copy of the removal order at the home. The same day Uribe interviewed A.S. at school, who stated Mother sometimes smokes marijuana in the home.

B. *The Petition and Detention*

On April 28, 2017 the Department filed a section 300 petition on behalf of Z.C., Chance, and A.S. The petition alleged Mother endangered the children's physical health and safety and placed them at risk of harm because of the presence of a loaded gun in the motel room where the children were staying (count b-1). The petition also alleged Mother neglected the medical needs of A.S., which placed Chance and Z.C. at risk of serious physical harm, danger, and medical neglect (count b-2, j-1). Further, the petition alleged Mother had a history of substance abuse, was currently abusing marijuana, and was under the influence of marijuana while she was caring for her children, rendering her unable to supervise and care for her three children (count b-3).

At Mother's request, the scheduled detention hearing was continued for one court day. Pending the hearing, Chance was released to Father over the weekend, and Z.C. was detained. The

juvenile court ordered Father to report to the Department for "live-scan" fingerprinting.

The detention hearing was held on May 1, 2017. The juvenile court found Father was Chance's presumed parent. The court admitted a copy of a restraining order issued on November 2, 2015, preventing Father from contacting or coming within 100 yards of T.O. for three years.[5] The restraining order awarded legal and physical custody of Chance to Mother, with no visitation to Father "pending [a] further hearing."

Although the restraining order does not provide any detail about the domestic violence incident, the juvenile court admitted a counseling report from Family Court Services (FCS), which references "a domestic violence finding against [F]ather," and states Mother obtained the restraining order after Father threatened her and physically assaulted her. In addition, social worker Lisa Storey reported in June 2017 that Chance spoke often about an incident in which Father hit Mother and put a knife to her throat. Storey recounted Chance "stated he was not scared when it happened, however it seems to be the subject matter that he likes to talk about whenever he speaks about his father."

The FCS report recommended Mother retain sole legal and physical custody of Chance, with Father having visitation for eight hours on two weekend days per month. FCS recommended Father have increased contact with Chance only after completing an anger management or batterer's treatment program.

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[5] Because Mother raises only ICWA notice issues with respect to Z.C., we limit our factual discussion to the facts relating to the juvenile court's dispositional order for Chance.

Although the record does not contain a final order of custody and visitation, counsel for Mother and Father agreed Father had day visits pursuant to the FCS recommendation. Father's counsel claimed Father also had some overnight visits, but Mother's counsel disputed this.

The juvenile court admitted a missing person report filed by Mother on September 30, 2015, in which Mother stated she left Chance with his paternal grandmother for a vacation, but when Mother called to ask when Chance would return, Father told her Chance was with him and the grandmother in Las Vegas, and they did not plan to return him to Mother. Rather, Mother would have to come to Las Vegas to retrieve him. Although the report was never corroborated, the FCS report states Father acknowledged Mother had to retrieve Chance from Father in Las Vegas, which exchange was facilitated by the local police department.

The juvenile court detained Z.C. and Chance, and placed them in foster care. The court ordered a prerelease investigation of the maternal grandmother Therese W., and gave the Department discretion to release the children to her. The court ordered monitored visits for Mother and Father for a minimum of two hours each week, with the Department having discretion to liberalize visitation.

C. *The Jurisdiction and Disposition Report*

At the time of the June 23, 2017 jurisdiction and disposition report, Chance was placed with foster parent Ana C. Chance stated to Storey he wanted to live with Mother and visit Father, and at other times said he wanted to live with Father and visit Mother.

Father stated he had a criminal history in California that was not reflected on the California Law Enforcement Telecommunication System (CLETS) database. However, Father did not comply with the order for him to submit to a live scan. Father provided information to the social worker on his family members who would provide care for Chance, but not his own information. The report noted, "It appeared the father was not prepared to provide care of the child."

The Department expressed a concern about Father's criminal history and the prior domestic violence between Father and Mother, and recommended Chance remain suitably placed with family reunification services.

D. *The Addendum Reports and Last Minute Information for the Court*

The June 29, 2017 addendum report stated Father reported he talked to Chance every day and discussed him with Ana C. Ana reported that "Chance is [d]oing well here and his dad does call every day." On June 28, 2017 dependency investigator Kimberly Young spoke to Chance. He stated, "I like my mommy and daddy, but I want to live with my daddy. I want to live with my daddy first and then my mommy." He added, "I like Ms. Ana, but I want to live with my daddy."

The August 24, 2017 addendum report stated that on June 30, 2017, following Father's visit with Chance, social worker Whitney Penny set up a schedule for Father to call Chance because Father had been calling "at all hours of the day." Under the schedule, Father could only call on Mondays, Wednesdays, and Fridays from 5:00 to 7:00 p.m. According to Penny, Father "cussed [her] out when [she] put the boundary down."

Father reported he was arrested and was in custody for driving to court and for visits in California and Nevada without a driver's license. As a result, he missed four domestic violence classes, and needed to reenroll in the program.

Social worker Penny attempted to arrange a home assessment of Father's home by the Las Vegas child protective services, but the agency would not perform an assessment without an order under the Interstate Compact on Placement of Children (Fam. Code, § 7900 et seq. (ICPC)) signed by a judicial officer. Because no request had been made under the ICPC, the assessment still had not been performed.

In a December 5, 2017 last minute information for the court, Penny reported that on November 19, 2017 Father became verbally abusive toward her, and she cut the visit short. On the same day Father visited Chance at a child-oriented restaurant, monitored by social worker Carter. At the visit Father claimed Chance told him he was being bullied. Carter reported that Father was "holding the child by the head stating loud[ly] to tell [Carter] what he told him." When Carter told Father she did not hear what Chance said, father became "irate" and stated, "You might as well get mother fucking security, because I ain't going for no mother fucking shit." According to Carter, Father "made a scene and was very close in [her] personal space yelling and screaming to the point [of] cursing." Chance was sitting next to Father while he behaved in this manner. Carter stated that "[i]t appeared [Father] had no regard for the language and intimidation that was displayed."

Social worker Carter felt unsafe and ended the visit. Father then screamed, "If the mother fucking bitch ass judge don't let my mother fucking son walk out with me at this next

court hearing Imma set it off in that bitch. I don't need no lawyer or nothing. It's gonna be me and that mother fucking judge."

At the next hearing on December 7, 2017, Chance's counsel stated Chance was "pretty traumatized" by the prior visit, and at school was "exhibiting some almost PTSD-like behavior. He's urinating on himself after this visit." In part because of Father's behavior, Chance started intensive therapy at least one time per week. At the request of Chance's attorney, the juvenile court ordered that future visitation, until the adjudication hearing, take place at the Department's office to ensure adequate security.

The last minute information included Father's more complete criminal history, including a 2007 felony conviction for first degree burglary, 2013 misdemeanor conviction for driving without a license, a 2013 pending case for misdemeanor disorderly conduct, and multiple warrants in 2014 for failures to appear, including for misdemeanor driving with a suspended license.

The February 2, 2018 addendum report stated Father told social worker Penny on December 6, 2017 if he did not get what he wanted at the hearing the next day, he would "blow up" in court and that he was "moving to Alabama." The next day Father called Penny and acknowledged he should not have gotten upset during his last visit with Chance and should not have threatened the judge. He stated his "'thug lifestyle' contributed to his response to [Carter] and the court proceedings and he would attempt to be more respectful and calm in future exchanges with [the Department] and the [c]ourt."

Father provided the address for his aunt Mary T. in San Bernardino for an assessment. Dependency investigator Young arranged with Father to assess Mary's home on January 10,

2018. Father confirmed the appointment, but when Young arrived at the home, neither Father nor Mary was there. Young spoke with the uncle, who stated Mary was at work and Father left to see about a job. The uncle allowed Young access to the home to evaluate it. He stated he would use a belt to discipline a child, hitting them on the legs. He also disclosed he had a criminal record. When Young later spoke with Mary, she stated she "can't have a child in here or take care of [a] child" because she worked two jobs and was not aware Father proposed placement of Chance with her.

On January 3, 2018 paternal grandmother Barbara G. stated in a text for the first time she was interested in having Chance placed with her.

E. *ICWA Compliance for Z.C.*

On May 9, 2017 K.C. filed a parental notification of Indian status form in which he stated he "may have Indian ancestry," and that Z.C.'s paternal grandmother Yolanda R. had more information regarding Z.C.'s ancestry. The court on that date ordered the Department to investigate Z.C.'s ancestry for purposes of ICWA.

The jurisdiction and disposition report lists Z.C. as having "possible" Cherokee ancestry. According to the report, on May 15, 2017 K.C. stated to dependency investigator Young that he was Cherokee. He provided information about paternal grandmother Yolanda R. and paternal great-grandmother Justina R. to assist in the investigation.

Young contacted Yolanda R. and Justina R. Yolanda stated she did not know if she had any Indian ancestry, but she had been told by her family she did. She thought her grandmother

"was full Indian." Justina stated she had Cherokee in her bloodline and her grandmother was "full Indian."

The Department indicated in the jurisdiction and disposition report that on June 1, 2017 it mailed notices to the Cherokee tribes, and referred to the "attached ICWA notices." The ICWA notice attached to the jurisdiction and disposition report is a notice of child custody proceeding for an Indian child (form ICWA-030), dated June 1, 2017. However, the notice states as to K.C. that his "[t]ribe or band" and tribal membership are "[u]nknown." Under additional information, the notice states, "Father stated he is unsure of Native American [s]tatus." The tribe or tribal membership for Yolanda R. and Justina R. were similarly listed as "[u]nknown—See Attached," but no attachment was included.

The certificate of mailing dated June 1, 2017 states the notice and copy of the petition were mailed "with postage for registered or certified mail, return receipt requested, fully prepaid," addressed to the Bureau of Indian Affairs (BIA), the Secretary of the Interior, and three Cherokee tribes. However, as conceded by the Department, the juvenile court record does not contain return receipts for any of the ICWA notices.[6] Neither does it contain a response from any tribe.

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[6] T.O.'s counsel sought to augment the record with signed return receipts for the mailing of the ICWA notices, but the supplemental clerk's transcript contains as to Z.C. only a copy of Mother's letter requesting a corrected record.

F. *The Jurisdiction and Disposition Hearing*

At the March 12, 2018 jurisdiction and disposition hearing, the juvenile court admitted, among other documents, the detention report, addendum reports, last minute information for the court, and jurisdiction and disposition report, as well as attachments to the reports. The attachments to the detention report included the November 2, 2015 restraining order naming Father as the restrained person, the FCS counseling report, and the September 30, 2015 missing person report.

The juvenile court sustained the petition as to Z.C. and Chance under section 300, subdivisions (b)(1) and (j). The court found the Department met its burden by a preponderance of the evidence based on the fact "there was a loaded firearm found within reach of the very young children." The court noted at the time two of the children were one and four years old.

As to Z.C., the Department represented it had mailed notice to the Cherokee tribes on June 1, 2017, and they had not intervened. The juvenile court found "there's no reason to know that the child is an Indian child under [ICWA]." On this basis it found ICWA did not apply to Z.C. The court ordered Z.C. suitably placed, and ordered K.C. to complete a parenting class and individual counseling to address all case issues. In addition, the court ordered monitored visitation, with the Department having discretion to liberalize visitation.

As to Chance, Father, as a nonoffending parent, did not object to the court's jurisdiction findings. However, Father's counsel argued the Department had not met its burden to prove by clear and convincing evidence that placing Chance with Father would be detrimental to the child.

The Department and Chance's counsel requested Chance be suitably placed, with only monitored visits for Father. They pointed to the continuing restraining order against Father, the domestic violence between the parents, and the Department's inability to assess Father's home. The Department also expressed concerns about Father's "volatility," his behavior during visits with Chance and with the social workers, and his threats to the judge.

The juvenile court ordered Chance placed in foster care with monitored visitation and family reunification services for Father, with the Department having discretion to liberalize Father's visitation. The court found, "[B]ased on the information before the court, in particular the argument of minors' counsel, that there is a restraining order in place protecting Mother from [Father], that is currently in place until November 2nd of this year, and that [the] Department has not been able to do a home assessment of [Father's] home, the court is ordering Chance remain suitably placed and further family reunification services to [Father]." The court stated in the minute order that it "finds by clear and convincing evidence" "that it would be detrimental to the safety, protection, or physical or emotional well-being, and special needs, if applicable, of the child to be returned to or placed in the home or the care, custody, and control of that or those parent(s)/legal guardian(s)."

After the juvenile court made its ruling, Father again requested the court release Chance to him until a home assessment could be performed. The Department objected, noting Father still had not done a live scan and neither of his two

home addresses had been assessed.[7] The court denied the request, and set a progress hearing for May 1, 2018 to verify Father's live scan and his California address, to perform a home assessment, and to assess the paternal grandmother for placement. The court ordered Father to complete a parenting class.

DISCUSSION

A. *The Department Failed To Provide Proper Notice Under ICWA*

Mother contends, the Department concedes, and we agree the Department failed to provide proper notice as required by ICWA to the Cherokee tribe, the BIA, and the Department of the Interior. ICWA provides: "In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention." (25 U.S.C. § 1912(a).) California law similarly requires notice to the Indian tribe and the parent, legal guardian, or Indian custodian if the court or the Department "knows or has reason to know" the proceeding concerns an Indian child. (Welf. & Inst. Code, § 224.3, subds. (a) & (d); see *In re Michael V.* (2016) 3 Cal.App.5th 225,

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[7] It appears Father provided his fingerprints to law enforcement on October 28, 2017, although it is not clear if he submitted to a live scan at that time.

232.) If the identity of the tribe cannot be determined, the notice must also be provided to the Secretary of the Interior and the BIA. (25 U.S.C. §§ 1903(11), 1912(a); Welf. & Inst. Code, § 224.3, subd. (a)(4); see *In re Isaiah W.* (2016) 1 Cal.5th 1, 9; *In re Michael V.*, at p. 232.)

As the Supreme Court explained in *In re Isaiah W.*, the notice requirement "enables a tribe to determine whether the child is an Indian child and, if so, whether to intervene in or exercise jurisdiction over the proceeding. No foster care placement or termination of parental rights proceeding may be held until at least 10 days after the tribe receives the required notice." (*In re Isaiah W., supra*, 1 Cal.5th at p. 5; accord, *In re Michael V., supra*, 3 Cal.App.5th at p. 232.)

Notice under ICWA must include "[i]f known, the names, birthdates, birthplaces, and Tribal enrollment information of other direct lineal ancestors of the child, such as grandparents . . . ." (25 C.F.R. § 23.111(d)(3) (2018); see Welf. & Inst. Code, § 224.3, subd. (a)(5)(C) [Notice must include "[a]ll names known of the Indian child's biological parents, grandparents, and great-grandparents, or Indian custodians, . . . as well as their current and former addresses, birth dates, places of birth and death, tribal enrollment information of other direct lineal ancestors of the child, and any other identifying information, if known."].)

With limited exceptions not applicable here, section 224.3, subdivision (c), provides that "[p]roof of the notice, including copies of notices sent and all return receipts and responses received, shall be filed with the court in advance of the hearing . . . ." (See *In re Louis S.* (2004) 117 Cal.App.4th 622, 629

["the ICWA notice, return receipts, and responses of the BIA and the tribes must be filed in the juvenile court"].)

Although K.C. stated to dependency investigator Young that he was Cherokee, the ICWA notice failed to list the Cherokee tribe as K.C.'s "[t]ribe" or "[t]ribal membership," instead stating K.C. was "unsure of [his] Native American [s]tatus." The tribe and tribal membership for paternal grandmother Yolanda R. and paternal great-grandmother Justina R. were listed as "Unknown—See Attached," but no attachment was included. Yet Yolanda and Justina believed their grandmothers were "full Indian," and Justina stated she had Cherokee ancestry.

In addition, although the ICWA notice stated it was mailed, return receipt requested, the absence of a receipt in the juvenile court's file showing receipt of notice by the Cherokee tribes, the Secretary of the Interior, or the BIA places in doubt whether the notices were mailed and violates the mandatory requirement to file the notices pursuant to section 224.3, subdivision (c).

As the Department concedes, the matter must be remanded for the Department to provide proper notice to the Cherokee tribes, the Secretary of the Interior, and the BIA with all the information obtained by the Department from K.C., Yolanda R., and Justina R. In addition, copies of the notices, return receipts, and any letters of response must be filed with the juvenile court, and the juvenile court must make findings on the adequacy of the ICWA notice and whether ICWA applies.

As Mother acknowledges in her reply brief, although remand is appropriate for the Department to provide proper ICWA notice, the jurisdictional findings and dispositional order conditionally remain in effect. (See *In re Elizabeth M.* (2018)

19 Cal.App.5th 768, 788 [conditionally affirming § 366.26 order and remanding for compliance with ICWA]; *In re Brooke C.* (2005) 127 Cal.App.4th 377, 385 [affirming dispositional order, but remanding to juvenile court to comply with required notice under ICWA].) If, after the Department provides proper notice under ICWA, the juvenile court determines Z.C. is an Indian child and ICWA applies to these proceedings, the juvenile court must conduct a new jurisdictional hearing on the petition, as well as all further proceedings, in compliance with ICWA and related California law. If the court determines Z.C. is not an Indian child, the court's jurisdictional findings and dispositional order remain in effect.

B. *Substantial Evidence Supports the Juvenile Court's Finding of Detriment to Chance from Placement with Father*

Father contends the trial court failed to make an express finding that placing Chance with him would cause detriment to Chance and, even if the juvenile court made this finding, substantial evidence does not support it. We conclude the juvenile court made a written finding of detriment and, even if its finding was not adequate, the error was harmless because substantial evidence supports a finding of detriment.

1. *Applicable law*

When a child is removed from a parent's custody under section 361, the juvenile court must determine whether there is a noncustodial parent who "desires to assume custody of the child," and if there is, "the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional

well-being of the child." (§ 361.2, subd. (a).) "Section 361.2, subdivision (a) evinces the legislative preference for placement with the noncustodial parent when safe for the child." (*In re Patrick S.* (2013) 218 Cal.App.4th 1254, 1262 (*Patrick S.*); accord, *In re K.B.* (2015) 239 Cal.App.4th 972, 979; *In re C.M.* (2014) 232 Cal.App.4th 1394, 1401.)

The juvenile court must make the finding of detriment by clear and convincing evidence. (*In re K.B., supra*, 239 Cal.App.4th at p. 980 [mother failed to provide clear and convincing evidence that placement of child with father was detrimental to child where father could provide "safe, healthy, and happy home"]; *Patrick S., supra*, 218 Cal.App.4th at p. 1263 [agency did not prove by clear and convincing evidence placement of child with father in Washington State would be detrimental to child where father was "competent, caring and stable parent," even though child was anxious about moving to live with father and father was scheduled to deploy with the Navy]; *In re Luke M.* (2003) 107 Cal.App.4th 1412, 1426 [substantial evidence supported juvenile court's finding by clear and convincing evidence that moving children to live with father in Ohio would cause emotional harm due to separation from sibling in California].) Clear and convincing evidence requires "'a high probability, such that the evidence is so clear as to leave no substantial doubt.'" (*In re C.M., supra*, 232 Cal.App.4th at p. 1401; accord, *In re Luke*, at p. 1426.)

We review the juvenile court's dispositional findings, including a finding of detriment under section 361.2, for substantial evidence. (*In re R.T.* (2017) 3 Cal.5th 622, 633 ["'In reviewing the jurisdictional findings and the disposition, we look to see if substantial evidence, contradicted or uncontradicted,

supports them.'"]; accord, *Patrick S., supra*, 218 Cal.App.4th at p. 1262 ["We review the record in the light most favorable to the court's order to determine whether there is substantial evidence from which a reasonable trier of fact could find clear and convincing evidence that placement would be detrimental to the child."]; *In re Luke M., supra*, 107 Cal.App.4th at p. 1426 [same].) "'In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court.'" (*In re R.T.,* at p. 633.)

2. *The juvenile court made a finding of detriment to Chance in its minute order*

Father is correct the juvenile court did not state on the record that it was making a finding of detriment to Chance by clear and convincing evidence. However, section 361.2, subdivision (c), provides the juvenile court must set forth the basis for its determination of detriment to the child under subdivision (a) "either in writing or on the record." Here, the juvenile court made the finding in writing. Specifically, the minute order provides: "The [c]ourt finds by clear and convincing evidence" "that it would be detrimental to the safety, protection, or physical or emotional well-being, and special needs, if applicable, of the child to be returned to or placed in the home or

the care, custody, and control of that or those parent(s)/legal guardian(s)."[8]

Although the language in the minute order is not tailored to the facts of this case, the order reflects the juvenile court's finding by "clear and convincing evidence" that placement of Chance with Father would be detrimental to Chance's safety or physical or emotional well-being. Further, the juvenile court in its oral findings stated its basis for not placing Chance with Father, including the domestic violence restraining order in place

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[8] The Department contends Father waived this issue by not arguing below that the juvenile court failed to make express findings of detriment. To the extent Father is arguing the juvenile court applied an incorrect standard in refusing to place Chance with Father, he is raising a question of law we may address on appeal even if not raised below. (See *In re Abram L.* (2013) 219 Cal.App.4th 452, 462 [concluding father did not forfeit appellate review of whether juvenile court failed to comply with § 361.2].) Further, a parent's challenge to the sufficiency of the evidence supporting a juvenile court order is an exception to the general rule that arguments not raised in the juvenile court are waived on appeal. (*In re Isabella F.* (2014) 226 Cal.App.4th 128, 136 ["'Sufficiency of the evidence has always been viewed as a question necessarily and inherently raised in every contested trial of any issue of fact, and requiring no further steps by the aggrieved party to be preserved for appeal.'"]; *In re P.C.* (2006) 137 Cal.App.4th 279, 288 ["[T]he argument that a judgment is not supported by substantial evidence is an 'obvious exception to the rule.'"].) Father's contention the juvenile court failed to make express findings, similar to an argument substantial evidence does not support the court's findings, can only be made after the court makes its findings. Thus, Father properly challenges the asserted error on appeal.

against Father and the lack of an assessment of Father's home, as well as the other "information before the court."

Even if we were to conclude the juvenile court's oral findings combined with its written minute order were not adequate under section 361.2, subdivision (c), "[r]eversal is justified 'only when the court, "after an examination of the entire cause, including the evidence," is of the "opinion" that it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.'" (*In re J.S.* (2011) 196 Cal.App.4th 1069, 1078 [applying harmless error standard under *People v. Watson* (1956) 46 Cal.App.2d 818 to affirm trial court's order placing child with nonoffending parent under § 361.2 and terminating jurisdiction despite lack of explicit detriment finding]; accord, *In re D'Anthony D.* (2014) 230 Cal.App.4th 292, 303 [juvenile court's failure to make detriment finding under § 361.2 was harmless error where juvenile court determined placement of children with father posed a substantial danger to the children's health based on father's physical abuse of son]; *In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1137 [trial court's error in failing to state factual basis for removing child from mother was harmless where the evidence showed developmentally disabled mother was unable to provide proper care for her child], disapproved on another ground in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6; cf. *In re Abram L.* (2013) 219 Cal.App.4th 452, 464 [concluding in light of insufficient evidence of detriment to child from placement with father that there was "a reasonable probability that the juvenile court would have rejected the Department's detriment argument had it properly considered the standard set forth in section 361.2"].)

As discussed below, in light of the substantial evidence of detriment to Chance from placement with Father, it is not reasonably probable the juvenile court would have reached a different conclusion had it made an express detriment finding on the record.

3. *Substantial evidence supports the juvenile court's finding that placement of Chance with Father would be detrimental to Chance's safety, protection, or physical or emotional well-being*

As noted by the juvenile court, Father had a history of domestic violence with Mother, culminating in a restraining order that remained in effect at the time of the court's dispositional order. Chance repeatedly recounted to social worker Story that Father hit Mother and put a knife to her throat. The restraining order awarded sole legal and physical custody to Mother, with no visitation to Father. The counseling report from FCS recommended only daytime visitation two days a month until Father completed a batterer's treatment program. But Father never completed the program, having missed four classes because of his arrest for driving without a license.

As the Department noted at the jurisdiction and disposition hearing, Father continued to exhibit "volatility" during his visits with Chance and interactions with the social worker. Father cursed at social worker Penny when she limited his telephone contact with Chance. On November 19, 2017 Penny had to cut a visit with Chance short because Father became verbally abusive toward her. The same day Father became irate at social worker Carter during a visit at a restaurant in which Father was screaming and cursing while sitting next to Chance, and

threatened the judge by saying he was going to "set it off in that bitch" if she did not release Chance to him. Carter feared for her safety and ended the visit early. Father later told Penny he would "blow up" in court if the juvenile court did not award him custody at the hearing.

Chance's attorney at the next hearing reported Chance was traumatized by Father's visit and was exhibiting "PTSD-like" behavior, including urinating on himself at school. The juvenile court granted the request on behalf of Chance that future visits be at the Department's office.[9]

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[9] The juvenile court also relied on the fact there was no assessment of Father's home in Las Vegas. However, social worker Penny reported that the State of Nevada would not assist in evaluation of Father's home without an ICPC request from the juvenile court. Although compliance with the ICPC is not required to place a minor with a parent (*Patrick S., supra*, 218 Cal.App.4th 1254, 1263; *In re John M.* (2006) 141 Cal.App.4th 1564, 1575), a juvenile court may use an ICPC evaluation to gather information about an out-of-state parent before placing the child with the parent. (*John M.*, at p. 1572.) Here, neither the juvenile court nor the Department took further steps to evaluate Father's home. Further, as the court in *Abram L.* noted, "section 361.2 contemplates the Department inspecting a noncustodial parent's home *after* the parent is given physical custody of the child." (*In re Abram L., supra*, 219 Cal.App.4th at p. 464 [citing to language in § 361.2, subd. (b)(2), that the juvenile court may order a home visit "within three months" of placement of the child with the noncustodial parent].) We therefore do not consider the lack of a home assessment in our determination of whether substantial evidence supported the juvenile court's dispositional order.

Substantial evidence supported the juvenile court's finding that placement of Chance with Father would be detrimental to Chance's safety and physical and emotional well-being. (*Patrick S., supra*, 218 Cal.App.4th at p. 1262; *In re Luke M., supra*, 107 Cal.App.4th at p. 1426.)

DISPOSITION

The dispositional order as to Chance L. is affirmed. The jurisdictional findings and dispositional order as to Z.C. are conditionally affirmed. The matter is remanded to the juvenile court for further proceedings consistent with this opinion with directions that the court shall order the Department to comply with the notice provisions of ICWA and related California law. Mother's appeals as to A.S. and Chance are dismissed.

FEUER, J.

WE CONCUR:

PERLUSS, P. J.

SEGAL, J.